

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

CLERK *lw*
SO. DIST. OF GA.

M. C. DAWSON,

Plaintiff,

vs.

CIVIL ACTION NO. CV604-145

GEORGIA DEPARTMENT OF
CORRECTIONS; ANDREW
ROUNDTREE; JOAN DEVAUX;
JENEIL PARKER; TARMARSHE
SMITH; MATTHEW TOMPKINS,
and Officer AUSTIN,

Defendants.

O R D E R

After an independent review of the record, the Court concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Plaintiff contends that he exhausted his administrative remedies. Plaintiff asserts that he filed an informal grievance, as well as a formal grievance, in which he contended that he was subjected to the excessive use of force. Plaintiff also asserts that once an informal or formal grievance is rejected at the institutional level, an inmate cannot file an appeal of the rejection.

As noted by the Magistrate Judge, Plaintiff did not follow the dictates of Standard Operating Procedure IIB05-0001. In addition, the rejection of a grievance on the institutional level does not mean that an inmate cannot file an appeal of the rejection.

Moreover, just as Plaintiff failed to properly support his assertions in response to Defendants' Motion for Summary Judgment, he fails to do so in his Objections.

The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Plaintiff's Motion for Summary Judgment (Doc. No. 38) is **DENIED**. The Motion for Summary Judgment filed by Defendants Roundtree, Tompkins, DeVaux, Parker, T. Smith, and Austin (Doc. No. 44) is **GRANTED**, and Plaintiff's claims against Defendants Roundtree, Tompkins, DeVaux, Parker, T. Smith, and Austin are **dismissed**, without prejudice, due to Plaintiff's failure to exhaust his administrative remedies prior to filing his Complaint.

Plaintiff filed an Amended Complaint (Doc. No. 12) in which he named as a Defendant the Georgia Department of Corrections. The Magistrate Judge recommended by Report dated May 10, 2005, that Plaintiff's claims set forth in his Amended Complaint be dismissed without prejudice because these claims were unrelated to those claims Plaintiff set forth in his original Complaint. The undersigned adopted the Report as the opinion of the Court by Order dated June 7, 2005. (Doc. No. 27.) However, due to a scrivener's error in the Report and Recommendation, the Georgia Department of Corrections was not dismissed by the June 7, 2005, Order. Plaintiff's claims against the Georgia Department of Corrections should have been dismissed, without prejudice, but due to this error, these claims were not. Plaintiff's claims against Defendant Georgia Department of Corrections are hereby **DISMISSED**, without prejudice. As there remains

no claim pending against any named Defendant, the Clerk of the Court is hereby authorized and directed to enter the appropriate Judgment of Dismissal.

SO ORDERED, this 10 day of July, 2006.


B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA